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No. 82-2125

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1983

METROPOLITAN PACKAGE STORE ASSOCIATION, INC.,; PAUL WAYNE, d/b/a COLONY LIQUORS; and WILLIAM GRANT & SONS, INC.,

Plaintiffs-Appellants,

-against-

EDWARD I. KOCH, as Mayor of the City of New York, and THE CITY OF NEW YORK; and JAMES H. TULLY, JR., et al. as Members of the STATE TAX COMMISSION, and EDWARD J. McLAUGHLIN, et al. as Members of the STATE LIQUOR AUTHORITY,

Defendants-Appellees,

ACE WINES & LIQUORS, INC., et al. and RETAILERS ALLIANCE, INC., et al.,

Intervenors-Appellees.

On Appeal from the Court of Appeals
of the State of New York

SUPPLEMENTAL BRIEF

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SUPPLEMENTAL BRIEF

The brief submitted in opposition to the motion to dismiss or affirm raises new matter and deals with other matters in so confusing a manner that we believe a short response will be helpful to the Court.

(1)

At the outset appellants call attention to Matter of Bacchus Imports, Ltd., 656 P. 2d 724 (Haw., 1983), pointing out that probable jurisdiction was noted on an appeal to this Court. That case involves similar overall issues, but the questions presented, relating to the Import-Export, the Commerce and the Equal Protection Clauses, rest on claimed improper discrimiantion consisting of exemption from the tax of a native Hawaiian liquor and all fruit wines manufactured in the State from farm products grown in the State.

The New York City tax has no exemption for local liquor or beer. Hence the grounds for the appeal in the Bacchus case are not present here.

(2)

Instead of dealing with our argument concerning the Import-Export Clause

or the grounds on which the State Courts found that the tax did not violate the Clause, appellants appear to be assuming that the tax was upheld as an inspection law.

To support their approach it is argued that the enactment of Chapter 316 of the Laws of 1960 amended the State Tax on Alcoholic Beverages "so as to eliminate the inspection purpose of the statute" (Br., p. 4). However, it is in error with regard to the nature of the 1960 amendment. Moreover, neither the City nor the State has claimed that its tax law was an inspection law.

The amendment in 1960 relied on by appellants merely eliminated a requirement that there be set aside from the tax revenues "a sum equal to the total amounts audited by him within such preceding month for expenses, including personal service and maintenance, of the state liquor au-

thority, of the county beverage control boards and of the New York city beverage control board." Such expenses may well be inspection expenses, but the tax law does not even intimate that it is an inspection law. In any event, the revenue it raises far exceeds the amount of such expenses.

It should be noted that the cases upholding the State tax, referred to at pages 22-23 of our Motion to Dismiss or Affirm, were decided a number of years after the change of the statute in 1960.

The appellants attempt to transform the City's tax into a tariff by reiteration, but the tax is imposed on a purely local event, the sale or use of the beer or liquor after they have come to rest in the City. It applies not only to importers, but to persons acquiring them or producing them.

(3)

The appellants persist in emphasizing Bulletin No. 529, issued by the New York State Liquor Authority under alcoholic beverage price control legislation. That legislation is independent of the State tax law and, if possible, even more independent of the enabling act for the City tax law and the City's Local Law imposing its tax. Even if the Bulletin could have been regarded as affecting the validity of the City's tax law while the Bulletin was in effect, it could not affect the law's validity once the Bulletin was invalidated and set aside by the New York Court of Appeals.

(4)

The appellants state that taxation of property of "extra-state non-residents" while exempting similar property of "intra-state residents" is a denial of equal protection of the laws. The state-

ment is obviously sound, but it has nothing to do with the tax law here involved. The tax applies to all alike. It provides no exemption.

CONCLUSION

The appeal should be dismissed or affirmed.

September 6, 1983.

Respectfully submitted,

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